

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

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)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
)

) Judge Patti B. Saris
)

)
) THIS DOCUMENT RELATES TO:
)

)
) *The City of New York v. Abbott Labs., et al.*
) (S.D.N.Y. No. 04-CV-06054)
) *County of Suffolk v. Abbott Labs., et al.*
) (E.D.N.Y. No. CV-03-229)
) *County of Westchester v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-6178)
) *County of Rockland v. Abbott Labs., et al.*
) (S.D.N.Y. No. 03-CV-7055)
) *County of Dutchess v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-06458)
) *County of Putnam v. Abbott Labs., et al.*
) (S.D.N.Y. No. 05-CV-04740)
) *County of Washington v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00408)
) *County of Rensselaer v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00422)
) *County of Albany v. Abbott Labs., et al.*
) (N.D.N.Y. No. 05-CV-00425)
)

[Caption Continues on Next Page]

**DECLARATION OF KIM B. NEMIROW TRANSMITTING DOCUMENTS
SUBMITTED IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED CONSOLIDATED COMPLAINT**

<i>County of Warren v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00468))
<i>County of Greene v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00474))
<i>County of Saratoga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00478))
<i>County of Columbia v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00867))
<i>Essex County v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00878))
<i>County of Chenango v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00354))
<i>County of Broome v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00456))
<i>County of Onondaga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00088))
<i>County of Tompkins v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00397))
<i>County of Cayuga v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00423))
<i>County of Madison v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00714))
<i>County of Cortland v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00881))
<i>County of Herkimer v. Abbott Labs. et al.</i>)
(N.D.N.Y. No. 05-CV-00415))
<i>County of Oneida v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00489))
<i>County of Fulton v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00519))
<i>County of St. Lawrence v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00479))
<i>County of Jefferson v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00715))
<i>County of Lewis v. Abbott Labs., et al.</i>)
(N.D.N.Y. No. 05-CV-00839))
<i>County of Chautauqua v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06204))
<i>County of Allegany v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06231))
<i>County of Cattaraugus v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06242))
<i>County of Genesee v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06206))

<i>County of Wayne v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06138))
<i>County of Monroe v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06148))
<i>County of Yates v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06172))
<i>County of Niagara v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06296))
<i>County of Seneca v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06370))
<i>County of Orleans v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06371))
<i>County of Ontario v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06373))
<i>County of Schuyler v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06387))
<i>County of Steuben v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06223))
<i>County of Chemung v. Abbott Labs., et al.</i>)
(W.D.N.Y. No. 05-CV-06744))
AND)
<i>County of Nassau v. Abbott Labs., et al.</i>)
(E.D.N.Y. No. 04-CV-5126))
)

I, KIM B. NEMIROW, hereby declare:

1. I am a member of the bar of the Commonwealth of Massachusetts and of this Court. I am an associate with Ropes & Gray LLP, and counsel to Defendants Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (collectively the “Warrick Defendants”). I submit this Declaration in support of Defendants’ Joint Motion to Dismiss Plaintiffs’ First Amended Consolidated Complaint.

2. Attached hereto as Exhibits 1 through 7 are true and correct copies of the following:

EXHIBIT**No.**

Chart Listing NDCs in Exhibit B to the First Amended Consolidated Complaint Not Previously Pleaded in the Text or Exhibits to the Consolidated Complaint or Nassau County Second Amended Complaint.	1
Chart Listing NDCs in Exhibit B to the First Amended Consolidated Complaint Not Previously Pleaded in the Text or Exhibits to the Consolidated Complaint or Nassau County Second Amended Complaint or That Were Previously Pleaded Without Any Spread Allegations.	2
Medicare and Medicaid Programs; Limited on Payments for Drugs, 52 Fed. Reg. 28,648 (July 31, 1987).	3
May 21, 2007 Letter from Joanne M. Cicala to John T. Montgomery and accompanying pricing data for Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (filed under seal).	4
May 21, 2007 Letter from Joanne M. Cicala to Richard M. Cooper and accompanying pricing data for Par Pharmaceutical Companies, Inc. (filed under seal).	5
May 21, 2007 Letter from Joanne M. Cicala to Brett R. Budzinski and accompanying pricing data for Novartis Pharmaceuticals Corporation (filed under seal).	6
May 21, 2007 Letter from Joanne M. Cicala to Erica Smith-Klocek and accompanying pricing data for the Pfizer Group (filed under seal).	7

3. Exhibits 4-7 attached hereto contain information that has been deemed confidential and highly confidential and are filed under seal, per Defendants' Joint Motion to File Under Seal Documents in Support of Defendants' Joint Motion to Dismiss NY Counties' First Amended Consolidated Complaint, Docket No. 4361 (June 20, 2007) and the Court's Order allowing the filing of these documents under seal.

I declare under penalty of perjury that the foregoing is true.

/s/ Kim B. Nemirow

Kim B. Nemirow

EXECUTED this 22th day of June, 2007 in Boston, Massachusetts.

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Kim B. Nemirow
Kim B. Nemirow